

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,) CR 05-00027 JMS
Plaintiff,) Honolulu, Hawaii
vs.) September 30, 2005
(02) ERIC K. HO,) 10:00 a.m.
Defendant.) Motion for Withdrawal of Not
Guilty Plea and to Plead
Anew

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE J. MICHAEL SEABRIGHT
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by machine shorthand, transcript produced with computer-aided transcription (CAT).

EXHIBIT E

1 FRIDAY, SEPTEMBER 30, 2005 10:00 A.M.

2 COURTROOM MANAGER: Criminal No. 05-00027 JMS, United
3 States of America versus Defendant (02), Eric K. Ho.

4 This case is called for hearing on a Motion For

10:04AM 5 Withdrawal of Not Guilty Plea and to Plead Anew.

6 MR. INCIONG: Good morning, Your Honor. Mark Inciong
7 for the United States.

8 THE COURT: Good morning.

9 MR. KIMSEL: And good morning, Your Honor. Craig
10 Kimsel for Eric Ho. He is present next to me in court.

11 THE COURT: Thank you. If you could approach with
12 your client --

13 MR. KIMSEL: Thank you, Your Honor.

14 THE COURT: -- Mr. Kimsel.

10:04AM 15 Mr. Ho, I understand that you've entered into a
16 written plea agreement with the government and you wish to
17 enter a plea of guilty today?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Now, before I can accept your
10:04AM 20 guilty plea, there are a number of questions I must ask you;
21 and I must do it primarily for two reasons. One is to make
22 sure that your plea is voluntary and knowing and that you
23 understand what rights you're giving up; and secondly I need to
24 be convinced that you, in fact, did do the things which

10:05AM 25 constitute the crime charged in Count 1 of the first

1 superseding indictment. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: So, it's important that you understand
4 fully what I'm asking you before you answer the questions. If

10:05AM

5 at any point in time you need to discuss a matter with your
6 attorney, you let me know; and I'll give you some time to do
7 that, okay?

8 THE DEFENDANT: Okay.

9 THE COURT: All right. Could we swear the defendant?

10:05AM

10 COURTROOM MANAGER: Yes, Your Honor.

11 (The defendant was sworn to answer truthfully.)

12 THE COURT: Okay. If we could have that --
13 Mr. Kimsel, that microphone in front of your client so the
14 record is clear here.

10:05AM

15 MR. KIMSEL: Oh, sure.

16 THE COURT: Thank you. Do you understand you're now
17 under oath, Mr. Ho; and if you answer any questions falsely,
18 that those answers could be used against you in a prosecution
19 for perjury or giving a false statement?

10:05AM

20 THE DEFENDANT: Yes.

21 THE COURT: Can you give us your full legal name?

22 THE DEFENDANT: Eric Marcus Kaleo Ho.

23 THE COURT: And how old are you, Mr. Ho?

24 THE DEFENDANT: 34.

10:06AM

25 THE COURT: And how far did you go in school?

1 THE DEFENDANT: Twelfth.

2 THE COURT: Did you graduate?

3 THE DEFENDANT: Yes.

4 THE COURT: Where did you graduate from?

10:06AM 5 THE DEFENDANT: Kamehameha.

6 THE COURT: And obviously English is your first
7 language?

8 THE DEFENDANT: Yes.

9 THE COURT: And you're able to read English?

10:06AM 10 THE DEFENDANT: Yes.

11 THE COURT: And did you -- were you able to read the
12 plea agreement in this case?

13 THE DEFENDANT: Yes.

14 THE COURT: And understand it?

10:06AM 15 THE DEFENDANT: Yes.

16 THE COURT: And you've read the first superseding
17 indictment in this case?

18 THE DEFENDANT: Yes.

19 THE COURT: And you were able to understand that?

10:06AM 20 THE DEFENDANT: Yeah.

21 THE COURT: Okay. Have you had any employment in the
22 last few years?

23 THE DEFENDANT: Yes.

24 THE COURT: Doing what?

10:06AM 25 THE DEFENDANT: I worked for my grandpa at Don Ho

1 Enterprise.

2 THE COURT: At what?

3 THE DEFENDANT: Don Ho Enterprise.

4 THE COURT: What is that?

10:06AM 5 THE DEFENDANT: He's an entertainer. Don Ho, that's
6 my grandfather. I worked for him.

7 THE COURT: Oh, Don Ho is your grandfather?

8 THE DEFENDANT: Yeah.

9 THE COURT: Oh, okay. So, you worked for your
10:06AM 10 grandfather?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. And have you had any drugs,
13 whether legal drugs or illegal drugs, or had any alcohol in the
14 last 24 hours?

10:06AM 15 THE DEFENDANT: No.

16 THE COURT: Is your mind clear?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand what you're doing here
19 today?

10:06AM 20 THE DEFENDANT: Yes.

21 THE COURT: Can you tell me that?

22 THE DEFENDANT: What I'm doing?

23 THE COURT: Yeah.

24 THE DEFENDANT: I'm pleading guilty to my charges.

10:07AM 25 THE COURT: Okay. Have you ever been treated for any

1 mental illness or addiction to any drugs?

2 THE DEFENDANT: Yes.

3 THE COURT: Tell me about that.

4 THE DEFENDANT: Salvation Army Treatment Center.

10:07AM 5 THE COURT: Okay. And when was that?

6 THE DEFENDANT: 2001, I think.

7 THE COURT: All right. Did you graduate from the
8 program?

9 THE DEFENDANT: Yes.

10:07AM 10 THE COURT: All right. Are you under any sort of
11 withdrawal or any sort of symptoms related to your prior drug
12 abuse --

13 THE DEFENDANT: No.

14 THE COURT: -- here today?

10:07AM 15 THE DEFENDANT: No.

16 THE COURT: Okay. Have you had enough time to talk to
17 Mr. Kimsel about your case?

18 THE DEFENDANT: Yes.

19 THE COURT: Are you satisfied with his services, that
10:07AM 20 is, his acting as your attorney?

21 THE DEFENDANT: Yes.

22 THE COURT: Now, has anyone made any promise or
23 assurance to you of any kind in an effort to get you to plead
24 guilty other than what's in the plea agreement?

10:07AM 25 THE DEFENDANT: No.

1 THE COURT: Has anyone threatened you or anyone else,
2 like a close family member or a friend, or forced you in any
3 way to enter a plea of guilty?

4 THE DEFENDANT: No.

10:07AM

5 THE COURT: Are you pleading guilty only because you
6 are guilty and that's what you yourself decided you want to do?

7 THE DEFENDANT: Yes.

8 THE COURT: Mr. Kimsel, do you have any reason to
9 doubt your client's competence to enter a voluntary and knowing
10 plea today?

10:08AM

11 MR. KIMSEL: No, I don't, Your Honor.

12 THE COURT: All right. Now, Mr. Ho, I want to go
13 through with you the charge contained against you in the first
14 superseding indictment that you intend to enter a plea of
15 guilty to. Have you discussed that with your attorney?

10:08AM

16 THE DEFENDANT: Yes.

17 THE COURT: And you said already you've read it,
18 right?

19 THE DEFENDANT: Yes.

10:08AM

20 THE COURT: Okay. Do you understand that it charges
21 that beginning on a date unknown, but continuing until
22 January 4th of 2005, you, Sean Carillo, C-A-R-I-L-L-O, and
23 Zuleika, Z-U-L-E-I-K-A, Carter knowingly and intentionally
24 conspired with each other and others to distribute 50 grams or
25 more of methamphetamine, its salts, isomers and salts of its

10:08AM

1 isomers, a Schedule II controlled substance? Do you understand
2 that?

3 THE DEFENDANT: Yes.

4 THE COURT: And do you understand there are various
10:08AM 5 overt acts -- is what it's called legally, which just means
6 things that were done to support that conspiracy -- that are
7 charged in this first superseding indictment?

8 THE DEFENDANT: Yes.

9 THE COURT: And it charges, for instance, that on --
10:09AM 10 in December of 2004 you met with Sean Carillo on Kauai and
11 advised him that you wished to utilize him to buy pound
12 quantities of methamphetamine from San Diego.

13 Do you understand that?

14 THE DEFENDANT: Yeah.

10:09AM 15 THE COURT: And that in January of 2005 you gave
16 Mr. -- is it a Mr. or Ms. Carter?

17 THE DEFENDANT: Ms.

18 THE COURT: -- Ms. Carter approximately \$16,000 in
19 United States currency in order to purchase methamphetamine
10:09AM 20 from San Diego?

21 THE DEFENDANT: Yes.

22 THE COURT: And that on January 2nd you and someone
23 else dropped off your two co-defendants at the Kauai airport?

24 THE DEFENDANT: Yes.

10:09AM 25 THE COURT: And that on January 3rd one pound of

1 methamphetamine was obtained in San Diego and then Mr. --
2 Ms. Carter returned to Kauai and met with you and provided you
3 with that methamphetamine?

4 THE DEFENDANT: Yes.

10:10AM 5 THE COURT: Okay. And then Sean Carillo flew from San
6 Diego to Honolulu with four ounces of methamphetamine on
7 January 4th?

8 THE DEFENDANT: Yeah.

9 THE COURT: And that you arrived at the airport to
10:10AM 10 pick them up?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. Now, the maximum penalties for
13 this offense, as I understand it, is up to life imprisonment --
14 that's the maximum penalty -- a fine of up to \$4 million or
10:10AM 15 both and a term of supervised release of not less than five
16 years and up to life. Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: And do you understand because a special
19 information was filed on March 15th of 2005 which alleges that
10:10AM 20 you had a prior felony drug conviction from September 8th of
21 1989, that a mandatory minimum imprisonment term of 20 years
22 would apply to your case?

23 THE DEFENDANT: Yes.

24 THE COURT: And that there's a \$100 special
10:11AM 25 assessment? Do you understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: Do both counsel agree I've stated the
3 penalties correctly?

4 MR. INCIONG: Yes, Your Honor.

10:11AM 5 MR. KIMSEL: The defense agrees, Judge.

6 THE COURT: Now, have you had a chance to read and
7 discuss the plea agreement with Mr. Kimsel?

8 THE DEFENDANT: Yes.

9 THE COURT: And do you have the original of that plea
10:11AM 10 agreement, Mr. Kimsel, in front of you there?

11 MR. KIMSEL: Yes, we do, Your Honor.

12 THE COURT: Mr. Kimsel, if you could please ask your
13 client to identify his signature on that plea agreement and
14 identify your own signature.

10:11AM 15 MR. KIMSEL: Yes, Your Honor. I want to redirect your
16 attention to Page -- I believe it's 15 -- 16 of the original
17 plea agreement. I'm showing you where it's -- it's designated
18 "Eric K. Ho." Above that -- above that name is a signature.
19 Is that your signature?

10:11AM 20 THE DEFENDANT: Yes.

21 MR. KIMSEL: Did you sign it today?

22 THE DEFENDANT: Yes.

23 MR. KIMSEL: In my presence?

24 THE DEFENDANT: Yes.

10:11AM 25 MR. KIMSEL: And I also signed it today.

1 THE COURT: Okay. Thank you.

2 Now, does this plea agreement reflect the entire
3 agreement between you and the United States?

4 MR. KIMSEL: Yes, it does, Your Honor.

10:12AM 5 THE COURT: I'm sorry. I'm talking to your client.

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand what I'm saying?
8 There's no other side agreements or anything of that sort?

9 THE DEFENDANT: No.

10:12AM 10 THE COURT: Okay. Mr. Inciong, if you could please
11 put on the record the essential terms of the plea agreement.

12 MR. INCIONG: Yes, Your Honor. The defendant is
13 pleading guilty to Count 1 of the first superseding indictment
14 which charges him with conspiracy to distribute 50 grams or
10:12AM 15 more of methamphetamine.

16 The defendant acknowledges his responsibility for
17 conspiring to distribute that amount of methamphetamine and is
18 waiving his right to have the government prove beyond a
19 reasonable doubt to a jury both the drug type and weight beyond
10:12AM 20 a reasonable doubt.

21 The defendant, as indicated, understands the maximum
22 penalties that apply in this case based on the filing of the
23 superseding -- or, I'm sorry, the special information alleging
24 his prior felony conviction.

10:12AM 25 The defendant is stipulating to and acknowledging the

1 accuracy of the facts of this case set out in Paragraph 8 of
2 the plea agreement. He also is acknowledging and stipulating
3 to the results of the drug analysis of the methamphetamine that
4 was seized in this case and analyzed by the DEA crime lab.

10:13AM

5 The defendant further acknowledges that he is
6 responsible for the 89.5 grams of actual methamphetamine found
7 in Defendant Carillo's possession and for the 193.7 grams of
8 methamphetamine -- actual methamphetamine thrown from the
9 vehicle in which he was traveling in the vicinity of the Lihue,

10:13AM

10 Kauai airport on January 4th of 2005.

11 The defendant further acknowledges that based on that
12 amount of methamphetamine, as well as the mixture and substance
13 containing a detectable amount of methamphetamine that was
14 obtained in San Diego by his co-conspirators, that he is placed
15 at a base offense level of 34 under the sentencing guidelines.

10:13AM

16 The defendant further agrees that he is -- was an
17 organizer, leader, manager or supervisor in this conspiracy and
18 that a two-level upward departure pursuant to guideline
19 Section 3B1.1(c) shall apply.

10:14AM

20 The plea agreement calls for and the United States
21 agrees that the defendant is entitled to a third point for
22 acceptance of responsibility based on his timely acceptance in
23 this plea.

24 The defendant is under the understanding that the plea
10:14AM 25 agreement is not -- will not be accepted by the Court until it

1 has had an opportunity to review the presentence report that
2 will be prepared in this matter and that the Court is not bound
3 by any stipulation entered into by the parties and the Court
4 will be the final determiner of any facts relevant to
10:14AM 5 sentencing in this matter.

6 Defendant agrees that ordinarily he would have a right
7 to appeal his sentence, but under this plea agreement he is
8 waiving his right to appeal except in two limited
9 circumstances: First, unless the Court sentences the defendant

10:15AM 10 to a sentence above and beyond the guideline range that the
11 Court finds applicable, the defendant will only, in that
12 instance, be able to appeal and collaterally attack that
13 portion of the sentence above and beyond the applicable
14 guideline range. Similarly, the defendant is preserving his

10:15AM 15 right to collaterally attack any claim for ineffective
16 assistance of counsel that he believes is -- is or may be
17 applicable in this case. The prosecution will retain its right
18 to appeal the sentence in this matter.

19 The defendant also understands that the Court will
10:15AM 20 consider the provisions of the sentencing guidelines in
21 determining his sentence but that there is no promise or
22 guarantee as to the applicability or non-applicability of those
23 guidelines.

24 The defendant understands that by pleading guilty he
10:15AM 25 is surrendering certain rights, including all of those which

1 pertain to his right to a jury trial that he would ordinarily
2 have in this matter, including the -- his right to have the
3 jury determine the drug type and quantity beyond a reasonable
4 doubt.

10:16AM 5 Finally the defendant agrees that he will fully
6 cooperate with the United States and agrees to abide by all of
7 the terms and conditions of that cooperation as outlined in
8 Paragraphs 21, 22 and 23 of the plea agreement.

9 THE COURT: Okay. Let me go over some of that with
10:16AM 10 you.

11 Do you agree, Mr. Kimsel, those are the essential
12 terms of the plea agreement?

13 MR. KIMSEL: Those are the essential terms, Your
14 Honor. I would add that it's our understanding that entering
10:16AM 15 into this plea agreement is a prerequisite to cooperation by
16 Mr. Ho.

17 THE COURT: Okay. That's not in the plea agreement,
18 though. I mean, that's just -- or are you referencing
19 something in the plea agreement?

10:16AM 20 MR. KIMSEL: Yes, Your Honor. I have to find it for
21 you. Just a minute.

22 Your Honor, yeah, that's just an understanding we
23 have.

24 THE COURT: Okay. All right. Mr. Ho, let me go
10:17AM 25 through some of this with you. Do you understand that normally

10:17AM 1 you would have a right to have a jury determine the type of
2 drug involved in your case and the amount of drug involved, but
3 you're waiving that and agreeing -- or giving that up and
4 agreeing to the amount of drugs involved in this case? Do you
5 understand that?

6 THE DEFENDANT: Yes.

10:17AM 7 THE COURT: And you're agreeing or stipulating that
8 you were an organizer, leader or manager which would result
9 in -- potentially result in a greater sentence under the
10 guidelines. Do you understand that?

11 THE DEFENDANT: Yes.

10:18AM 12 THE COURT: Now, let me ask a question, Mr. Inciong,
13 about Paragraph 10(c) on Page 8. As I understand it, the
14 100 -- or the 215.3 grams that were recovered was part of the
15 overall one pound that was brought back from San Diego; is that
16 right?

10:18AM 17 MR. INCIONG: Yes, Your Honor. There was -- there was
18 an additional pound that was purchased by Defendant Carter.
19 She brought that back to Kauai. Mr. Carillo then returned a
20 day or two later with an additional 4 ounces.

21 THE COURT: Right.

10:18AM 22 MR. INCIONG: So, the pure amount that we have is the
23 amount that was recovered on Mr. Carillo's person when he was
24 flying back into the islands. We have an additional amount
25 that was discarded from the vehicle Mr. Ho and Ms. Carter were

1 traveling in, and then there's an additional amount that was
2 never recovered.

3 So, that's why we have a portion is pure because we
4 were able to actually seize and analyze that; and the other
10:19AM 5 portion, we weren't able to analyze. We don't have a purity.

6 THE COURT: Okay. But --

7 MR. INCIONG: We weren't able to seize --

8 THE COURT. -- but that other portion -- that's what
9 my concern is. That other portion was part of the one pound
10:19AM 10 that was delivered in San Diego? Is that -- is that clear from
11 the case?

12 MR. INCIONG: Yes.

13 THE COURT: Okay. I just want to make clear to the
14 parties that I don't know that the conclusion you have reached
10:19AM 15 among yourselves is the one probation will reach or I will
16 reach. And I want to make that very clear that if you have one
17 pound of meth and essentially test part of it and it comes out
18 to a certainty purity, I'm not convinced the Court would be
19 prepared to accept that the rest of it isn't that same purity
10:19AM 20 for purposes of sentencing.

21 So -- and there may be case law on that and there may
22 not; but as I've read this, I just wanted to inform the parties
23 of that.

24 Now, Mr. Kimsel, do you understand what I'm saying
10:19AM 25 here?

1 MR. KIMSEL: Yes, I do, Your Honor.

2 THE COURT: And that, as I understand it, would
3 increase the guidelines two levels higher. Is that your
4 understanding, Mr. Inciong --

10:19AM 5 MR. KIMSEL: Yes, it is.

6 MR. INCIONG: Yes.

7 THE COURT: -- Mr. Kimsel?

8 Do you want to talk to your client about that,
9 Mr. Kimsel?

10:19AM 10 And I'm not saying I won't accept that if that's
11 what's in the report. I don't know what will be in the report.
12 I'm just pointing out something that is a stipulation between
13 the parties that the Court looks at and has some concern as to
14 how the Court may look at it later down the road.

10:20AM 15 MR. KIMSEL: My client understands that the Court may
16 take a different view from the process contained in the plea
17 agreement between us and the United States and that the Court
18 is not necessarily a party to this plea agreement.

19 THE COURT: Okay.

10:20AM 20 MR. KIMSEL: And this plea agreement only extends
21 between the defendant and the United States.

22 THE COURT: All right. And I just want to make that
23 clear that I did see something here that did raise some concern
24 for me. And I'm not suggesting how I'm going to rule

10:20AM 25 necessarily, but I did want to make sure the parties understood

1 that and had some notice that there was some issue relating to
2 that.

3 MR. INCIONG: Yes, Your Honor.

4 MR. KIMSEL: Can I have a moment, Your Honor?

10:20AM 5 THE COURT: Yes. Why don't you explain this to Mr. Ho
6 so that he -- I can discuss it with him?

7 (Mr. Kimsel and the defendant confer.)

8 THE COURT: Mr. Kimsel, I think I would be more
9 comfortable if we took a recess.

10:22AM 10 MR. KIMSEL: Perhaps so, Your Honor.

11 THE COURT: And --

12 MR. KIMSEL: This might take a little bit of time to
13 explain to Mr. Ho. I didn't anticipate this question
14 (inaudible).

10:22AM 15 THE COURT: That's fine. I just wanted to put that on
16 the record.

17 What's people's schedules like? I mean, do you want
18 to come back this afternoon or in 15 minutes or what do you
19 want to do.

10:22AM 20 MR. KIMSEL: Maybe if we had until 11:00 o'clock we
21 could -- I could explain it to Mr. Ho a little bit and explain
22 to him how relevant conduct is separate, perhaps, from the plea
23 agreement in this case and that it always will be there. It
24 may take --

10:23AM 25 (Mr. Kimsel and the defendant confer.)

1 THE COURT: No, no. I don't want to go forward until
2 I'm convinced that you've explained that to him and he
3 understands it.

4 MR. KIMSEL: Why don't -- could we just pass this for
10:23AM 5 about five minutes, Your Honor, just so I can --

6 THE COURT: Yes, yes.

7 MR. KIMSEL: -- have some assurances that he really
8 does understand it?

9 THE COURT: Yes, I'll just go off the bench.

10:23AM 10 Mr. Inciong, is your time okay?

11 MR. INCIONG: Yes.

12 THE COURT: I'll just go off the bench and then come
13 back on when you're ready.

14 MR. KIMSEL: Thank you, Your Honor.

10:23AM 15 THE COURT: Okay. Thank you.

16 (Recess at 10:23 a.m., until 10:32 a.m.)

17 THE COURT: Okay. Mr. Kimsel, where do we stand?

18 MR. KIMSEL: Yeah, Your Honor, I've had a chance to
19 review that provision of the plea agreement with Mr. Ho and
10:32AM 20 explain it in some detail to his satisfaction. I believe we
21 really -- we're ready now to go forward with the --

22 THE COURT: Okay. So, Mr. Ho, let me just make sure
23 you understand this for the record. This particular
24 agreement -- all the stipulations in the plea agreement are
10:32AM 25 agreements between you and the government only. Do you

1 understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: And I'm not bound by those. Do you
4 understand that?

10:32AM 5 THE DEFENDANT: Yes.

6 THE COURT: Okay. In this particular agreement what
7 it states is that you're agreeing to a base offense level of 34
8 under the sentencing guidelines.

9 What the Court had mentioned is that there may be an
10:32AM 10 issue as to the weight of the -- I'm sorry -- the purity of the
11 drugs that were not recovered which could increase the
12 guidelines by two more levels. And the Court does have some
13 concern about that based on its review right now of what's in
14 the record. And so, I just wanted to make sure you were aware
10:32AM 15 of that. Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: And even with that, you want to go forward
18 at this time?

19 THE DEFENDANT: Yes.

10:33AM 20 THE COURT: And you've had enough time to talk to
21 Mr. Kimsel about that?

22 THE DEFENDANT: Yes.

23 THE COURT: Okay. Do you also understand in the plea
24 agreement that normally you would have a right to appeal your
10:33AM 25 conviction or sentence to the Ninth Circuit Court of Appeals?

1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: And you also would have a right to bring
4 what's called a collateral attack against your sentence which
10:33AM 5 would be -- or your conviction which you would bring to me
6 first, and then after that it could go to the Ninth Circuit
7 Court of Appeals. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: And as to your right for appeal to the
10:33AM 10 Ninth Circuit, you're giving up any right to appeal except, if
11 the Court sentences you above the guideline range determined by
12 the Court, you could still appeal that portion of the sentence
13 greater than the guidelines called for. Do you understand
14 that?

10:33AM 15 THE DEFENDANT: Yes.

16 THE COURT: And do you also understand that you're
17 giving up your right for a collateral attack, that is, coming
18 to me challenging the conviction or sentence, except in two
19 circumstances? One is the same as your right to appeal. That
10:34AM 20 is, if I were to sentence above the guideline range that I
21 determine, you could appeal that portion of the sentence. Do
22 you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: And, also, you could challenge the
10:34AM 25 effectiveness of your attorney. That is, if you were unhappy

1 with the performance of your attorney, then you could bring a
2 claim to me regarding that. Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. Now, you also understand that in
10:34AM 5 the cooperation agreement, that the cooperation agreement does
6 not require the government to file a motion for downward
7 departure; and even if it does, the Court is not required to
8 grant such a motion?

9 THE DEFENDANT: Yes.

10:34AM 10 THE COURT: And you also understand you can't force
11 the government to file that motion?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that the Court is not
14 required to accept the plea agreement but that I may reject it
10:34AM 15 later?

16 THE DEFENDANT: Yes.

17 THE COURT: Now, I want to go over some important
18 rights with you, that is, rights you have under the
19 constitution and laws of the United States that you're giving
10:34AM 20 up by pleading guilty.

21 First, do you understand under the constitution and
22 laws of the United States that you would have a right to have
23 the charges set forth against you in the first superseding
24 indictment tried before a jury?

10:35AM 25 THE DEFENDANT: Yes.

1 THE COURT: And that at a trial you would be presumed
2 innocent and the government would have the burden of proving
3 your guilt beyond a reasonable doubt and you would not have to
4 present any evidence nor would you have to prove that you were
10:35AM 5 not guilty? Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: And at a trial you would have the right to
8 assistance of counsel, such as Mr. Kimsel, throughout that
9 process. Do you understand that?

10:35AM 10 THE DEFENDANT: Yes.

11 THE COURT: And you would have a right to see and hear
12 all of the government witnesses that would be brought into
13 court and that Mr. Kimsel could question all of those
14 government witnesses. It's called cross-examination. Do you
10:35AM 15 understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: And you could object to evidence offered
18 by the government; and you could offer your own evidence,
19 whether it be documents of some sort or witnesses to testify.

10:35AM 20 And should you have a hard time getting witnesses to come to
21 court or getting the documents, you could use the Court's
22 subpoena power to essentially force that evidence to come into
23 court. Do you understand that?

24 THE DEFENDANT: Yes.

10:36AM 25 THE COURT: And if you went to trial, you would have a

1 constitutional right to testify on your own behalf. Do you
2 understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: But you also would have a right not to
10:36AM 5 testify, and no inference or suggestion of guilt could be drawn
6 by the jury -- by the jury based on the fact you didn't
7 testify. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: And that by pleading guilty, if I accept
10:36AM 10 your plea, do you understand there will be no trial and you'll
11 give up all of the rights that we just discussed?

12 THE DEFENDANT: Yes.

13 THE COURT: And, further, if you proceed today, you'll
14 have to give up your right not to incriminate yourself because
10:36AM 15 I will ask you what you did that constitutes the crime; and
16 that answer would tend to incriminate you in a crime,
17 obviously. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Now, Mr. Ho, I assume you're a United
10:36AM 20 States citizen?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand the offense to which
23 you're pleading guilty is a felony offense --

24 THE DEFENDANT: Yes.

10:36AM 25 THE COURT: -- and that if your plea is accepted and

1 you are found guilty of that offense, you could lose valuable
2 civil rights, such as the right to vote, the right to serve on
3 a jury, the right to hold public office and the right to
4 possess any firearm or ammunition? Do you understand that?

10:37AM 5 THE DEFENDANT: Yes.

6 THE COURT: Do you have any pending state charges
7 against you at the present time?

8 MR. KIMSEL: Yes, he does, Your Honor.

9 THE COURT: Okay. You understand that I'm not going
10 to be adjudging those state matters, Mr. Ho; and, also, you
11 need to make sure you understand that any sentence you receive,
12 if you do, from the State Court could run consecutive or in
13 addition to any sentence imposed here in Federal Court. Do you
14 understand that?

10:37AM 15 THE DEFENDANT: Yes.

16 THE COURT: Now, the United States law establishes
17 detailed sentencing guidelines which specify sentences for
18 people convicted of federal crimes. The Supreme Court has
19 recently said that federal judges must consider these
20 guidelines, but they're advisory only.

10:37AM 21 So, in addition to considering these guidelines, the
22 Court considers other factors set forth in a law which is
23 contained at 18 United States Code Section 3553(a).

24 Have you and your attorney had a chance to talk about
10:37AM 25 the sentencing guidelines and the other factors that play into

1 sentencing?

2 THE DEFENDANT: Yes.

3 THE COURT: And do you understand that the Court will
4 not be able to determine the guidelines in your case until

10:38AM

5 after a presentence report has been prepared and you and the
6 government both have an opportunity to read that report and to
7 make any objections you may have to what's in that report?

8 THE DEFENDANT: Yes.

10:38AM

9 THE COURT: Do you also understand that if -- after
10 the Court determines what guideline applies to your case, the
11 Court will still consider all the other factors set forth at
12 3553(a), that law that we talked about, and that I may impose a
13 sentence that is more severe or less severe than what's called
14 for by the guidelines? Do you understand that?

10:38AM

15 THE DEFENDANT: Yes.

16 THE COURT: And if your sentence is worse or more
17 severe than you expected, you won't have a right to withdraw
18 your guilty plea. Do you understand that?

19 THE DEFENDANT: Yes.

10:38AM

20 THE COURT: Do you also understand the government has
21 not waived or given up its right to appeal its sentence in this
22 case?

23 THE DEFENDANT: Yes.

10:38AM

24 THE COURT: Do you understand that based on your
25 guilty plea alone, the Courts could sentence you up to the

1 maximum penalty which in this case would be up to life
2 imprisonment?

3 THE DEFENDANT: Yes.

4 THE COURT: Now, has anyone made any promise to you as
10:39AM 5 to what your sentence will be?

6 THE DEFENDANT: No.

7 THE COURT: Do you understand that if you were
8 sentenced to a term of imprisonment, a term of supervised
9 release would follow and that if you were found by a court to
10:39AM 10 have violated terms of supervised release, you could be sent
11 back to prison?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you also understand that in the federal
14 system parole has been abolished, so that if you are
10:39AM 15 incarcerated, you will not be released early on parole? Do you
16 understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Mr. Inciong, is either restitution or
19 forfeiture applicable in this case?

10:39AM 20 MR. INCIONG: No, there is not, Your Honor.

21 THE COURT: Okay. I'm going to turn next, Mr. Ho, to
22 the facts that relate to what you did so the court can be
23 assured that you did commit the crime with which you're
24 prepared to plead guilty.

10:39AM 25 So, at this time what I'm going to do is I'm going to

1 ask Mr. Inciong to do two things: First, to tell us what the
2 elements are that he would have to prove under Count 1 of the
3 first superseding indictment and, second, to set forth the
4 facts the government is prepared to prove at trial.

10:40AM 5 MR. INCIONG: Yes, Your Honor. The elements at issue
6 for this charge would be as follows: First, that there was an
7 agreement between two or more persons to commit a crime, in
8 this case, distribution of 50 grams or more of methamphetamine;
9 secondly, that the defendant became a member of the conspiracy
10 knowing of at least one of its objects and intending to help
11 accomplish it. Additionally for sentencing purposes, the
12 government would be required to prove beyond a reasonable doubt
13 that the quantity of actual methamphetamine was 50 grams or
14 more.

10:40AM 15 To prove those elements, the United States would put
16 forth the following evidence at trial: That in December of
17 2004, Mr. Ho, along with Co-Defendant Sean Carillo, met in the
18 Island of Kauai and spoke in regard to Mr. Carillo obtaining
19 pound quantities of methamphetamine from San Diego, California,
10:40AM 20 for Mr. Ho for distribution on the Island of Kauai.

21 On or about January 2nd of 2005, Mr. Carillo,
22 accompanied by Co-Defendant Zuleika Carter, went to the
23 Hawaiian Airlines ticket counter at the Lihue, Kauai airport
24 and paid cash -- which was provided to her by Mr. Ho -- of
10:41AM 25 approximately \$3,000 for round-trip airline tickets for

1 Ms. Carter and Mr. Carillo to fly from Lihue to Honolulu and
2 then on to Los Angeles and then finally to San Diego,
3 California, for the purpose of purchasing methamphetamine. On
4 January 2nd of 2005 Defendants Carillo and Carter did actually
10:41AM 5 make that flight and arrived in San Diego.

6 On January 3rd of 2005 an individual arrived at a San
7 Diego hotel and met with Carter and Carillo. The individual
8 brought with him -- brought with her approximately one pound of
9 methamphetamine which she exchanged for \$12,000 in cash that Ho
10:41AM 10 had provided to Carter.

11 On or about January 3rd of 2005, Ms. Carter then
12 returned to Kauai from San Diego via Los Angeles with the
13 approximately one pound of methamphetamine in her possession;
14 and she delivered those drugs to Mr. Ho after she arrived on
10:42AM 15 Kauai.

16 On or about January 3rd of 2005, the same individual
17 referred to in -- as the one coming to the hotel room in San
18 Diego delivered approximately 4 additional ounces of
19 methamphetamine to Mr. Carillo, again, in San Diego,
10:42AM 20 California.

21 On or about January 4th of 2005, Mr. Carillo then flew
22 back from San Diego to Kauai with the approximately 4 ounces of
23 methamphetamine in his possession. And those drugs were
24 concealed within a pair of bicycle shorts he wore underneath
10:42AM 25 another pair of shorts.

1 Mr. Carillo possessed that methamphetamine with the
2 intent to deliver at least part of the drugs to Mr. Ho for
3 further distribution within the District of Hawaii.

4 Laboratory analysis of the drugs that were found on
10:42AM 5 Mr. Carillo's possession revealed it to contain 89.5 grams of
6 actual or pure methamphetamine.

7 On or about January 4th of 2005, Co-Defendants
8 Carter -- Co-Defendant Carter, along with Mr. Ho, arrived at
9 the Lihue, Kauai airport to pick up Mr. Carillo and the 4
10:43AM 10 ounces of methamphetamine he had brought back from San Diego.

11 Inside the vehicle in which they arrived, Mr. Ho
12 possessed approximately 193.7 grams of pure methamphetamine.
13 This methamphetamine was later thrown from the vehicle and
14 recovered by Kauai police and was part of the approximately one
10:43AM 15 pound of methamphetamine which Carter had originally brought
16 back from San Diego, California, and delivered Ho -- delivered
17 to Ho for the purpose of distributing on Kauai.

18 Those are the facts that the government would provide
19 at trial, along with the laboratory results from the DEA crime
10:43AM 20 lab and their conclusions as to the purity and amount of
21 methamphetamine.

22 THE COURT: Okay. Mr. Ho, did you understand what
23 Mr. Inciong just said?

24 THE DEFENDANT: Yes.

10:43AM 25 THE COURT: Do you agree with each and every fact that

1 he just set forth?

2 THE DEFENDANT: Yes.

3 THE COURT: Okay. Let me ask you some specific
4 questions. In around approximately December of 2004, did you

10:44AM 5 request Sean Carillo to go to San Diego to do something?

6 THE DEFENDANT: Yes.

7 THE COURT: What did you want him to do?

8 THE DEFENDANT: Pick up some meth for me.

9 THE COURT: Okay. And bring it back to Kauai?

10:44AM 10 THE DEFENDANT: Yeah.

11 THE COURT: And did you then, in early January of
12 2005, accompany Ms. Carter to the airport where you provided
13 some cash for a trip to Southern California?

14 THE DEFENDANT: Yes.

10:44AM 15 THE COURT: And was there an expectation that Mr. --
16 I'm sorry. Did Sean Carillo then also fly to Southern
17 California?

18 THE DEFENDANT: Yes.

19 THE COURT: And did you understand that both of them
10:44AM 20 would be picking up methamphetamine --

21 THE DEFENDANT: Yes.

22 THE COURT: -- to bring back to you from Southern
23 California?

24 THE DEFENDANT: Yes.

10:44AM 25 THE COURT: And, in fact, when Ms. Carter returned to

1 Kauai, did she then provide you with any drugs?

2 THE DEFENDANT: Yes.

3 THE COURT: What did she provide you with?

4 THE DEFENDANT: 15 ounces.

10:45AM 5 THE COURT: 15 ounces of methamphetamine?

6 THE DEFENDANT: Yeah.

7 THE COURT: Okay. And what did you do with that
8 methamphetamine?

9 THE DEFENDANT: I guess I had -- I must have had it on
10:45AM 10 me at the time we got -- I got rid of some, sold some.

11 THE COURT: Okay.

12 THE DEFENDANT: And the rest, I had on me.

13 THE COURT: Okay. So, the purpose of you getting the
14 drugs was so you could sell it?

10:45AM 15 THE DEFENDANT: Yes.

16 THE COURT: And you also went to the airport to pick
17 up Sean Carillo on or around January 4th with the intent to get
18 drugs that he had picked up in San Diego?

19 THE DEFENDANT: That was his drugs, but yeah -- that
10:45AM 20 was his.

21 THE COURT: Okay. What was your -- what was your
22 arrangement with those drugs?

23 THE DEFENDANT: No, I had nothing to do with those
24 drugs. I was just picking him up because he was -- he asked me
10:46AM 25 to pick him up.

1 (Mr. Kimsel and the defendant confer.)

2 THE DEFENDANT: Yeah, that was his cut for doing the
3 trip for me.

4 THE COURT: Oh, okay. So, it was part of the overall
10:46AM 5 deal between yourself and Ms. Carter and him?

6 THE DEFENDANT: Yeah.

7 THE COURT: Okay. Mr. Inciong, are you satisfied?

8 MR. INCIONG: I am, Your Honor. Thank you.

9 THE COURT: Mr. Kimsel, are you satisfied with that?

10:46AM 10 MR. KIMSEL: Yes, Your Honor.

11 THE COURT: Okay. As to Count 1 of the first
12 superseding indictment, how do you plead, guilty or not guilty,
13 Mr. Ho?

14 THE DEFENDANT: Guilty.

10:46AM 15 THE COURT: It is the finding of the Court that the
16 defendant is competent to understand the proceedings and to
17 enter a knowing and informed plea, that he understands the
18 charge to which he is pleading guilty, that he is entering a
19 knowing and voluntary plea and is not entering the plea because
10:46AM 20 of any force or threat, that the plea of guilty is supported by
21 an independent basis in fact containing each of the essential
22 elements of the offense, that he knows all of the rights
23 associated with the trial and that he understands the
24 sentencing guidelines and the other factors the Court must
10:46AM 25 consider at sentencing and the maximum possible punishment.

1 Based on that and as you have acknowledged that you
2 are guilty, Mr. Ho, I accept your guilty plea; and you are now
3 adjudged guilty of that offense.

4 The Court at this time files the plea agreement but
10:47AM 5 does reserve a determination as to whether to accept the plea
6 agreement until a presentence investigation report has been
7 prepared, and that would be at sentencing.

8 Now, I am referring you to the U.S. Probation Office
9 for the preparation of a presentence investigation report. I
10:47AM 10 do urge you to cooperate fully and to let you know that you can
11 have Mr. Kimsel present with you as you need through that
12 process, and he can help explain to you how that process will
13 work.

14 Any other matters?

10:47AM 15 COURTROOM MANAGER: Your Honor, sentencing date.

16 THE COURT: Sentencing date, yes.

17 COURTROOM MANAGER: Monday, February 6th, 2006, at
18 1:30.

19 THE COURT: Is that okay with everybody?

10:47AM 20 MR. KIMSEL: Yes, Your Honor.

21 MR. INCIONG: That's fine, Your Honor.

22 THE COURT: Okay. Anything else?

23 MR. KIMSEL: Your Honor, just one quick note. The --
24 where I was stating earlier that the plea agreement was a
10:47AM 25 prerequisite to the -- to cooperation, it's actually in the

1 cooperation agreement that states that he must enter into this
2 plea agreement.

3 THE COURT: Okay. So, that was an earlier stand-alone
4 agreement with the government regarding his cooperation?

10:48AM 5 MR. KIMSEL: That's correct.

6 THE COURT: Okay. Anything further?

7 MR. KIMSEL: No.

8 THE COURT: Okay. We're in recess. Thank you.

9 MR. INCIONG: Thank you, Your Honor.

10 (Proceedings concluded at 10:48 a.m.)

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1 COURT REPORTER'S CERTIFICATE

2 I, Sharon Ross, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that the foregoing is a correct transcript from the record of
5 proceedings in the above-entitled matter.

6 DATED at Honolulu, Hawaii, August 2, 2006.

7

8 /s/Sharon Ross

9 SHARON ROSS

10 CSR 432, RPR, CRR

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